

geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

- (3) the number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in §54.202(a)(1)(A);
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that it is complying with applicable service quality standards and consumer protection rules;
- (6) certification that the carrier is able to function in emergency situations as set forth in §54.201(a)(2);
- (7) certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) *Filing deadlines.* In order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information in paragraph (a) no later than October 1, 2006, and thereafter annually by October 1 of each year. Eligible telecommunications carriers that file their reports after the October 1 deadline shall receive support pursuant to the following schedule:

- (1) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the second, third and fourth quarters of the subsequent year.
- (2) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.
- (3) Eligible telecommunication carriers that file no later than July 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

3. Section 54.307 is amended by adding paragraph (d) to subpart D to read as follows:

**§ 54.307 Support to a competitive eligible telecommunications carrier.**

(a)-(c) \* \* \* [unchanged]

(d) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (c) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it submits the data required pursuant to paragraph (b) of this section within 60 days of that effective date. Thereafter, the eligible telecommunications carrier must submit the data required in paragraph (b) of this section pursuant to the schedule in paragraph (c).

4. Section 54.313 is amended by adding paragraph (d)(3)(vi) to subpart D to read as follows:

**§ 54.313 State certification of support for non-rural carriers.**

(a)-(d)(3)(v) \* \* \* [unchanged]

(vi) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to § 54.309 or § 54.311, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

5. Section 54.314 is amended by adding paragraph (d)(6) to subpart D to read as follows:

**§ 54.314 State certification of support for rural carriers.**

(a)-(d)(5) \* \* \* [unchanged]

(6) (vi) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to §§54.301, 54.305, or 54.307 or part 36 subpart F of this chapter, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

6. Section 54.809 is amended by adding the last sentence to paragraph (c) to subpart D to read as follows:

**§ 54.809 Carrier certification.**

(a)-(b) \* \* \* [unchanged]

(c) *Filing deadlines.* In order for a price cap local exchange carrier or an eligible telecommunications carrier serving lines in the service area of a price cap local exchange carrier to receive interstate access universal service support, such carrier shall file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to § 54.802, and thereafter on June 30 of each year. Such carrier that files its line count information after the June 30 deadline shall receive support pursuant to the following schedule:

- (1) Carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year.
- (2) Carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year.
- (3) Carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

## APPENDIX B

PARTIES FILING COMMENTS IN *ETC DESIGNATION*  
*FRAMEWORK PROCEEDING*Comments:

<u>Commenter</u>	<u>Abbreviation</u>
Alaska Regulatory Commission	RCA
Alaska Telephone Association	Alaska Telephone
ALLTEL Corporation	ALLTEL
American Congress on Surveying and Mapping	ACSM
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AWS
Beacon Telecommunications Advisors, LLC	Beacon
BellSouth Corporation	BellSouth
People of the State of California and the California Public Utilities Commission	California
CC Communications	
Centennial Communications Corp.	Centennial
CenturyTel, Inc.	CenturyTel
Coalition of State Telecommunications Associations and Rural Telephone Companies	State and Rural Coalition
California Telephone Association Small Company Committee	
Colorado Telecommunications Association	
Independent Telephone Companies of Vermont	
Indiana Exchange Carrier Association	
New Hampshire Telephone Association	
Oklahoma Rural Telephone Coalition	
Oregon Telecommunications Association	
Telephone Association of Maine	
Washington Independent Telephone Association	
ILEC Division of the Wisconsin State Telecommunications Association	
Commnet Wireless, LLC	Commnet
Cox Communications, Inc.	Cox
CTIA-The Wireless Association	CTIA
Dobson Cellular Systems, Inc.	Dobson
Fred Williamson and Associates, Inc.	F. Williamson
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Hopi Telecommunications, Inc.	Hopi Telecommunications
Independent Telephone & Telecommunications Alliance	ITTA
Iowa Utilities Board	Iowa Board
John Staurulakis, Inc.	JSI
Mid-Sized Carrier Coalition	Mid-Sized Carrier Coalition
Innovative Telephone	Innovative
Iowa Telecommunications and Valor Telecommunications of Texas, L.P.	Valor

Missouri Public Service Commission	MoPSC
Montana Independent Telecommunications Systems	Montana ITS
National Association of State Utility Consumer Advocates	NASUCA
National Exchange Carrier Association, Inc.	NECA
National Telecommunications Cooperative Association	NTCA
National Tribal Telecommunications Association	NTTA
Nebraska Rural Independent Companies	Nebraska RICs
New York State Department of Public Service	NYDPS
Nextel Communications, Inc.	Nextel
Nextel Partners, Inc.	
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Rural Independent Competitive Alliance	RICA
Rural Telecommunications Group	RTG
Oregon-Idaho Utilities and	OIU
Humboldt Telephone Company	HTC
Public Utility Commission of Oregon	Oregon Commission
PetroCom License Corporation	PetroCom
Puerto Rico Telephone Company	PRT
Qwest Communications International	Qwest
Rural Carrier Group	
Rural Cellular Association and	
The Alliance of Rural CMRS Carriers	RCA
SBC Communications Inc.	SBC
South Dakota Telecommunications Association	SDTA
Townes Telecommunications, Inc.	Townes
Sprint Corporation	Sprint
TCA, Inc. – Telcom Consulting Associates	TCA
TDS Telecommunications Corporation	TDS
Telscape Communications, Inc.	Telscape
United States Cellular Corporation	US Cellular
United States Telecom Association	USTA
Universal Service Administrative Company	USAC
Verizon telephone companies	Verizon
Wireless Division of the Wisconsin State Telecommunications Association	Wireless Division
Western Telecommunications Alliance	WTA
Western Wireless Corporation	Western Wireless

**Reply Comments:**

Ad Hoc Telecommunications Users Committee	Ad Hoc
ALLTEL Corporation	ALLTEL
AT&T Corp.	AT&T
Cellular Telecommunications & Internet Association	CTIA
Centennial Communications Corp.	Centennial
CenturyTel, Inc.	CenturyTel
Coalition of State Telecommunications Associations	

and Rural Telephone Companies	State and Rural Coalition
Corr Wireless Communications, LLC	Corr Wireless
Cox Communications, Inc.	Cox
Dobson Cellular Systems	Dobson
Fred Williamson and Associates, Inc.	F. Williamson
General Communications, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Iowa Utilities Board	Iowa Board
Mid-Size Carrier Coalition	
Innovative Telephone	(Vitelco)
Iowa Telecommunications Services, Inc.	(Iowa Telecom)
Valor Telecommunications of Texas, L.P.	(Valor)
Montana Independent Telecommunications System	Montana ITS
Montana Public Service Commission	MPSC
Missouri Public Service Commission	MOPSC
National Association of State Utility Consumer Advocates	
National Exchange Carrier Association, Inc.	NASUCA
National Telecommunications Cooperative Association	NECA
Native Networking Policy Center	NTCA
Nebraska Rural Independent Companies	NNPC
Nextel Communications, Inc.	Nebraska RICs
Office of Advocacy of the U.S. Small Business Administration	NEXTEL
Puerto Rico Telephone Company	
Rural Carriers	Advocacy
Rural Cellular Association and	PRT
Alliance of Rural CMRS Carriers	
Rural Telecommunications Associations	RCA-ARC
Sprint Corporation	Associations
Texas Statewide Telephone Cooperative, Inc.	Sprint
United States Cellular Corporation	TSTCI
United States Telecom Association	US Cellular
Universal Service Administrative Company	USTA
VerizonVerizon	USAC
Western Telecommunications Alliance	
Western Wireless Corporation	WTA
Wyoming Office of Consumer Advocate	Western Wireless
	Wyoming OCA

**APPENDIX C: FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)****(Report and Order)**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>272</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice of proposed rulemaking to which this *Report and Order* responds.<sup>273</sup> The Commission sought written public comment on the Federal-State Joint Board's (Joint Board) recommendations in the *Recommended Decision*, including comment on the IRFA incorporated in that proceeding.<sup>274</sup> The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>275</sup>

**A. Need for, and Objective of, this Report and Order**

2. This *Report and Order* addresses the minimum requirements that a telecommunications carrier must meet in order to be designated as an "eligible telecommunications carrier" or "ETC," and thus eligible to receive federal universal service support.<sup>276</sup> Specifically, consistent with the recommendations of the Joint Board, this *Report and Order* adopts additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).<sup>277</sup> In addition, for states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, as recommended by the Joint Board, this *Report and Order* encourages such state commissions to consider these requirements when examining whether an ETC should be designated.<sup>278</sup> The application of these additional requirements by the Commission and state commissions should allow for a more predictable ETC designation process.<sup>279</sup> In addition, because the additional requirements in this *Report and Order* create a more rigorous ETC designation process, their application by the Commission and state commissions will support the long-term sustainability of the universal service fund.<sup>280</sup>

3. In considering whether carriers have satisfied their burden of proof necessary for ETC designation, this *Report and Order* now requires that applicants: (1) provide five-year plans demonstrating how high-cost universal service support will be used to improve coverage, service

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<sup>272</sup>See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>273</sup>*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 19 FCC Rcd 10800 (2004) (*ETC Designation Framework NPRM*).

<sup>274</sup>*Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (Recommended Decision).

<sup>275</sup>See 5 U.S.C. § 604.

<sup>276</sup>See *supra* paras. 17-72.

<sup>277</sup>See *supra* paras. 17-39.

<sup>278</sup>See *supra* paras. 58-60.

<sup>279</sup>See *supra* para. 1.

<sup>280</sup>See *supra* para. 15.

quality or capacity on a wire center-by-wire center basis throughout their proposed designated service areas; (2) demonstrate their ability to remain functional in emergency situations; (3) abide by service quality standards, such as the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service; (4) offer local usage plans comparable to those offered by the incumbent LEC in the areas for which they seek designation; and (5) acknowledge that the Commission may require them to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.<sup>281</sup> In addition, these additional requirements are made applicable to all ETCs previously designated by the Commission and therefore, such ETCs are required to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006.<sup>282</sup> This *Report and Order*, however, does not adopt the Joint Board's recommendation to evaluate whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because the Commission concludes the objective of these criterion will be achieved through the other requirements adopted in this *Report and Order*.<sup>283</sup>

4. In this *Report and Order*, the Commission also sets forth its analytical framework for determining whether or not the public interest would be served by an applicant's designation as an ETC. The Commission finds that, under the statute, an applicant should only be designated as an ETC where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier. The Commission clarifies that its public interest analysis for ETC designations for which it has jurisdiction pursuant to section 214(e)(6) of the Act will review many of the same factors in areas served by non-rural and rural incumbent LECs, although the Commission recognizes that the outcome of the analysis might vary depending on whether the area is served by a rural or non-rural carrier.<sup>284</sup> In addition, as part of its public interest analysis, the Commission will examine the potential for creamskimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC.<sup>285</sup> The Commission also encourages states to apply the Commission's analysis because it believes such application will assist them in determining whether or not the public interest would be served by designating a carrier as an ETC.<sup>286</sup>

5. In addition, in this *Report and Order*, the Commission strengthens its reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. Specifically, each ETC designated by the Commission must provide on an annual basis: (1) progress updates on its five-year service quality improvement plan, including maps detailing progress towards meeting its five-year improvement plan in every wire center for which designation was received, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why any network improvement targets have not been met; (2) detailed information on outages in the ETC's network caused by emergencies, including the date and time of

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<sup>281</sup> See *supra* paras. 21.

<sup>282</sup> See *supra* para. 20.

<sup>283</sup> See *supra* paras. 37-39.

<sup>284</sup> See *supra* paras. 42-43.

<sup>285</sup> See *supra* paras. 48-53.

<sup>286</sup> See *supra* para. 53.

onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future; and (3) how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per 1,000 handsets or lines. These annual reporting requirements are required for all ETCs designated by the Commission. Similar to the ETC designation requirements adopted above, the Commission, in this *Report and Order*, encourages states to require these reports to be filed by all ETCs over which they possess jurisdiction.<sup>287</sup>

6. The Commission, however, does not adopt the recommendation of the Joint Board to control growth of the high-cost universal service fund by limiting the scope of high-cost support to a single connection that provides access to the public telephone network.<sup>288</sup> Section 634 of the 2005 Consolidated Appropriations Act prohibits the Commission from utilizing appropriated funds to “modify, amend, or change” its rules or regulations to implement this recommendation.<sup>289</sup>

7. In this *Report and Order*, the Commission also agrees with the Joint Board’s recommendation that changes are not warranted in its rules concerning procedures for redefinition of service areas served by rural incumbent LECs.<sup>290</sup> In addition, in this *Report and Order*, the Commission grants several petitions for redefinition of rural incumbent LEC service areas.<sup>291</sup> Moreover, the Commission directs the Universal Service Administrative Company (USAC) to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission’s rules.<sup>292</sup> The Commission also modifies its annual certification and line count filing deadlines so that newly designated ETCs are permitted to file that data within sixty days of their ETC designation date in order to allow high-cost support to be distributed as of the date of ETC designation.<sup>293</sup> In addition, the Commission modifies the quarterly certification schedule for the receipt of interstate access support (IAS) so that price cap local exchange carriers and/or competitive ETCs that miss the June 30 annual IAS certification deadline may file their certification thereafter in order to receive IAS support in the second calendar quarter after the certification is filed.<sup>294</sup> Finally, the Commission declines to define mobile wireless customer location in terms of “place of primary use,” as defined by the Mobile Telecommunications Sourcing Act (MTSA), for universal service purposes.<sup>295</sup>

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<sup>287</sup> See *supra* para. 71.

<sup>288</sup> See *supra* para. 16.

<sup>289</sup> Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 634, 118 Stat 2809 (2004) (*2005 Consolidated Appropriations Act*).

<sup>290</sup> See *supra* para. 74.

<sup>291</sup> See *supra* paras. 76-79.

<sup>292</sup> See *supra* paras. 84-86.

<sup>293</sup> See *supra* paras. 87-92.

<sup>294</sup> See *supra* paras. 93-94.

<sup>295</sup> See *supra* paras. 80-83.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

8. No comments were filed directly in response to the IRFA in this proceeding. The Commission has nonetheless considered the potential significant economic impact of the rules on small entities and, as discussed below, has concluded that the rules adopted may impose some economic burden on small entities that are designated as ETCs.

**C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.<sup>296</sup> The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>297</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>298</sup> Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>299</sup>

10. We have included ETCs that may meet the definition of "small business" in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and is not dominant in its field of operation.<sup>300</sup>

11. *Incumbent Local Exchange Carriers (Incumbent LECs)*. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>301</sup> We have therefore included small incumbent local exchange carriers in this FRFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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<sup>296</sup> 5 U.S.C. § 604(a)(3).

<sup>297</sup> 5 U.S.C. § 601(6).

<sup>298</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

<sup>299</sup> 15 U.S.C. § 632.

<sup>300</sup> *Id.*

<sup>301</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

12. *Wireline Carriers and Service Providers (Wired Telecommunications Carriers).*<sup>302</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees.<sup>303</sup> According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.<sup>304</sup> Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.<sup>305</sup> Thus, under this size standard, the great majority of firms can be considered small.

13. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers.<sup>306</sup> Under that SBA definition, such a business is small if it has 1,500 or fewer employees.<sup>307</sup> According to recent data, there are 1,310 incumbent LECs, 563 CAPs, 281 IXCs, 21 OSPs, 613 payphone providers and 772 resellers.<sup>308</sup> Of these, an estimated 1,025 incumbent LECs, 472 CAPs, 254 IXCs, 20 OSPs, 609 payphone providers, and 740 resellers have 1,500 or fewer employees. In addition, an estimated 285 incumbent LECs, 91 CAPs, 27 IXCs, 1 OSP, 4 payphone providers, and 32 resellers,<sup>309</sup> alone or in combination with affiliates, have more than 1,500 employees.<sup>310</sup> We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXCs, CAPs, OSPs, payphone providers and resellers are small entities that may be affected by the decisions and rules adopted in this Order.

14. *Wireless Service Providers.* The SBA has size standards for wireless small businesses within the two separate Economic Census categories of *Paging and of Cellular and Other Wireless Telecommunications*. For both of those categories, the SBA considers a business to be small if it has

<sup>302</sup>For the limited purposes of the FRFA, we will use the term "Wired Telecommunications Carriers" to connote wireline carriers and service providers.

<sup>303</sup>13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310.

<sup>304</sup>U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax; 1997," Table 5, NAICS code 517110.

<sup>305</sup>*Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

<sup>306</sup>NAICS code 513310.

<sup>307</sup>13 C.F.R. § 121.201, NAICS code 517110.

<sup>308</sup>FCC, *Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service*, Table 5.3 (May 2004) (*Trends in Telephone Report*). The total for resellers includes both toll resellers and local resellers. The category for CAPs also includes competitive local exchange carriers (CLECs).

<sup>309</sup>The total for resellers includes both toll resellers and local resellers.

<sup>310</sup>See *Trends in Telephone Report* at Table 5.3.

1,500 or fewer employees.<sup>311</sup> According to *Trends in Telephone Report* data, 1,387 companies reported that they were engaged in the provision of wireless service.<sup>312</sup> Of these 1,387 companies, an estimated 945 reported that they have 1,500 or fewer employees and 442 reported that, alone or in combination with affiliates, they have more than 1,500 employees.<sup>313</sup> Consequently, we estimate that most wireless service providers are small entities that may be affected by the rules adopted herein.

15. *Cellular Radio Telephone Service.* The Commission has not developed a definition of small entities specifically applicable to cellular licensees. Therefore, the applicable definition of a small entity is the SBA definition applicable to radiotelephone companies, which provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>314</sup> The size data provided by SBA do not enable us to make a meaningful estimate of the number of cellular providers that are small entities because it combines all radiotelephone companies with 500 or more employees.<sup>315</sup> We therefore have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms operating during 1992 had 1,000 or more employees.<sup>316</sup> Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder would be small businesses under the SBA definition.

16. There are presently 1,758 cellular licenses. However, the number of cellular licensees is not known, since a single cellular licensee may own several licenses. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.<sup>317</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 732 or fewer small cellular service carriers that may be affected by the rules, herein adopted.

17. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross

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<sup>311</sup>13 C.F.R. § 121.201, NAICS code 517212.

<sup>312</sup>*Trends in Telephone Report* at Table 5.3.

<sup>313</sup>*Id.*

<sup>314</sup>13 C.F.R. § 121.201 (SIC Code 4812).

<sup>315</sup>U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

<sup>316</sup>U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

<sup>317</sup>*Trends in Telephone Service*, Table 19.3 (February 19, 1999).

revenues of \$40 million or less in the three previous calendar years.<sup>318</sup> For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>319</sup> These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.<sup>320</sup> No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>321</sup> On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small businesses." Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

18. *Narrowband PCS.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>322</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>323</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the

<sup>318</sup>See *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, WT Docket No. 96-59, 11 FCC Rcd 7824, paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996); See also 47 C.F.R. § 24.720(b).

<sup>319</sup>See *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, WT Docket No. 96-59, 11 FCC Rcd 7824, paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996).

<sup>320</sup>See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84, paras. 115-17 (1994).

<sup>321</sup>FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); See also *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997), 62 Fed. Reg. 55348 (Oct. 24, 1997).

<sup>322</sup>*Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196, para. 46 (1994).

<sup>323</sup>See "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674," *Public Notice*, PNWL 94-004 (released Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787," *Public Notice*, PNWL 94-27 (released Nov. 9, 1994).

Narrowband PCS Second Report and Order.<sup>324</sup> A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>325</sup> A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>326</sup> The SBA has approved these small business size standards.<sup>327</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.<sup>328</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

19. *Specialized Mobile Radio (SMR)*. The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the three previous calendar years, respectively.<sup>329</sup> In the context of both the 800 MHz and 900 MHz SMR service, the definitions of “small entity” and “very small entity” have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

20. *Rural Radiotelephone Service*. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>330</sup> A significant subset of the Rural

<sup>324</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>325</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>326</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>327</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>328</sup> See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

<sup>329</sup> 47 C.F.R. § 90.814.

<sup>330</sup> The service is defined in section 22.99 of the Commission’s Rules. 47 C.F.R. § 22.99.

Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>331</sup> For purposes of this IRFA, we will use the SBA's size standard applicable to wireless service providers, *supra* – an entity employing no more than 1,500 persons.<sup>332</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

21. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.<sup>333</sup> For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra* – an entity employing no more than 1,500 persons.<sup>334</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

**D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

22. *Reporting and Recordkeeping.* The Commission requires all ETCs over which it possesses jurisdiction, including ETCs designated by the Commission prior to this *Report and Order*, to submit annually certain information regarding their networks and their use of universal service funds.<sup>335</sup> These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation so that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, as part of the carrier's certification that the universal service funds are being used consistent with the Act.<sup>336</sup>

23. Every ETC designated by the Commission must submit the following information on an annual basis:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets; an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled.<sup>337</sup> The information should be submitted at the wire center level;

<sup>331</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules. 47 C.F.R. §§ 22.757, 22.759.

<sup>332</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>333</sup> The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

<sup>334</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>335</sup> See *supra* paras. 68-69.

<sup>336</sup> See *supra* para. 68.

<sup>337</sup> If an ETC had not previously submitted a network improvement plan to the Commission, it should do so with its first reporting compliance filing. An ETC that has not previously submitted a network improvement plan should include a description of improvements or upgrades it has made since the date of its initial designation.

- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*).<sup>338</sup> An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.<sup>339</sup> Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;
- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;<sup>340</sup>
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;<sup>341</sup>
- (6) certification that the ETC is able to function in emergency situations;<sup>342</sup>
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others):

<sup>338</sup>See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*).

<sup>339</sup>See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9.

<sup>340</sup>See *supra* para. 22 for a description of the steps a carrier must take to provide service upon reasonable request.

<sup>341</sup>CTIA, *Consumer Code for Wireless Service*, available at [http://www.wow-com.com/pdf/The\\_Code.pdf](http://www.wow-com.com/pdf/The_Code.pdf).

<sup>342</sup>If an ETC had not previously submitted a plan demonstrating how it will remain functional in an emergency, it should do so with its first reporting compliance filing.

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>343</sup>

25. The Commission concludes in this *Report and Order* that the above reporting regulations are reasonable and consistent with the public interest and the Act. In particular, these reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligations under section 214(e) of the Act to provide supported services throughout their designated service areas. In addition, the Commission concludes that any administrative burdens placed on carriers as a result of this *Report and Order* are outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.

26. The Commission has considered the above alternatives when establishing these reporting requirements. For example, to simplify and consolidate the administrative burdens that may be associated with annual reports concerning outages, the Commission modeled its outage reporting requirements after the Commission's reporting requirements concerning outages adopted in the *Outage Reporting Order*. As a result, many ETCs may be able to file the same or similar information instead of having to compile and submit new outage data. In addition, the Commission has not imposed financial reporting requirements on ETCs because it believes any such requirements are unwarranted in light of the other commitments and reporting requirements adopted in this *Report and Order*. Moreover, the Commission has only required annual certifications, instead of actual data submissions, for certain of its reporting requirements, such as local usage plans, functionality in emergency situations, and compliance with consumer protection standards. Such certifications ensure compliance with section 254 of the Act without imposing data submissions that would impose significant administrative burdens on small entities that may not possess the resources to compile and submit such information on an annual basis.

#### **F. Report to Congress**

27. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>344</sup> In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.<sup>345</sup>

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<sup>343</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>344</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>345</sup> See 5 U.S.C. § 605(b).

**STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (FCC 05-46).*

Last year, the Federal-State Joint Board on Universal Service recommended a comprehensive set of guidelines to govern the designation of eligible telecommunications carriers (ETCs) by state commissions and the FCC. I am pleased that this Order adopts those guidelines without significant modifications, and I again want to thank my state colleagues for their important contributions to this effort.

As the Joint Board and the Commission both have recognized, the designation of ETCs — particularly in rural areas facing competition — is an important responsibility about which the statute provides little concrete guidance. For several years following the enactment of the 1996 Act, there was widespread uncertainty regarding the appropriate standards for determining whether the designation of a competitive ETC serves the public interest. Last year, the FCC adopted interim measures, and this Order will provide for far greater certainty and uniformity by memorializing a comprehensive set of minimum standards based on input from a broad array of state and federal regulators.

The Commission has appropriately recognized, consistent with section 214 of the Act, that competitive carriers (often CMRS carriers) should be eligible to receive universal service funding in high-cost areas. At the same time, this Order, like the Joint Board recommendation, calls for a rigorous designation process to ensure that all ETCs are prepared to serve all customers upon reasonable request and to offer high-quality services at affordable rates throughout the designated service area. In other words, competitive carriers seeking ETC status must serve as carriers of last resort, just as incumbents must. Moreover, wireless carriers must submit build-out plans — backed by reporting requirements and annual certifications — demonstrating that the universal service funding will be used to deploy infrastructure capable of providing service (possibly in combination with resale) throughout the designated service area. I am pleased that the Commission has endorsed the Joint Board's recommendations, and I hope that state commissions and the FCC heed this guidance in upcoming designation proceedings.

**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (FCC 05-46).*

Today the Commission largely adopts the ETC designation recommendations of the Federal-State Joint Board on Universal Service. In doing so, we provide a more rigorous template for review of ETC applications. This is long overdue, and I am pleased to support it. I especially am encouraged by the build-out plans, reporting requirements and annual certifications we require in this decision. Collectively, these will provide this Commission and our state counterparts with a way to monitor and ensure that ETC funding truly is being used to preserve and advance universal service.

As promising as this development is, much more work needs to be done to secure the long-term sustainability of universal service. As ETC designations grow, new challenges will arise. In particular, the Commission will need to face the consequences of multiple designations in high-cost areas on the overall size of the fund. In addition, key questions are teed-up in the current Joint Board referral concerning the high-cost support mechanism and the level of support made available to multiple ETCs. While we don't resolve these issues here, they are an important part of the larger picture. I am hopeful that today's decision is only the foundation for this broader discussion and that in the near future we will build on the efforts to increase accountability that we adopt here.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (FCC 05-46).*

Through this Order, the Commission acts on the recommendations of the Federal-State Joint Board on Universal Service concerning the designation of eligible telecommunications carriers (ETCs). I support this Order because it largely reflects the consensus of the Joint Board, which worked hard to establish useful guidelines for the designation of multiple ETCs in high cost areas.

I am pleased that this item recognizes, as Congress did in the Telecommunications Act of 1996, that the FCC and State commissions must take greater care in examining the public interest to determine the wisdom of multiple ETCs in rural, high cost areas. Establishing a more substantive public interest test and providing meaningful guidance on ETC designations will help ensure that federal universal service funding is available only to those providers who are committed to serving rural communities. For example, this Order adopts the Joint Board's recommendation that State commissions have flexibility to harmonize existing carrier-of-last-resort and line extension obligations when designating additional ETCs. The Order also establishes more rigorous certification and reporting requirements for FCC-designated ETCs, and encourages State commissions to take similar approaches.

While establishing a more meaningful public interest test is a necessary step in our efforts to manage responsibly the growth of the universal service fund, there may be some missed opportunities here. Commenters argued that the Commission should adopt specific tools to enable or incent the FCC and State commissions to consider the impact of additional designations on the overall size of the fund, a growth dynamic that this Order lightly acknowledges and does not adequately attempt to forecast. I believe that we could have done more to explore frameworks to identify those very high-cost areas where it may be prohibitive to fund more than one ETC. This Order declines to adopt a specific national benchmark based on this record, but I am pleased that it gives State commissions the flexibility to consider whether the dilution of support caused by additional designations would undermine the ability of carriers to offer comparable service at comparable rates.

It also bears emphasis that the FCC must lead by example in applying these designation criteria and a rigorous public interest standard. Commenters have raised concerns about the Commission's past application of the existing ETC designation standards and I take these concerns seriously. Even if some of the tools available to the FCC for our designations lack the nuance or sophistication of the tools available to State commissions, our FCC designation criteria should not be applied in a rote or mechanical fashion. Rather, our designation decisions must involve careful consideration of the facts before us and the unique nature of individual circumstances, in order to satisfy our obligations as stewards of the universal service fund.

Although I would have considered additional measures to strengthen FCC designation of ETCs and to address the impact of ETC designations on the universal service fund,, I find that this Order is largely faithful to the recommendations of my colleagues on the Joint Board, whose contributions and efforts I value highly, and that it marks a measurable improvement in the level of guidance that the FCC previously provided to State commissions and ETC applicants, alike. The Order also includes a firm commitment to revisit these issues again, which will provide an opportunity to assess the effectiveness of the measures we adopt today. For these reasons, I support this item.